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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,809	05/24/2001	Gerard Jay Bellasalma	60137-026	2588

26096 7590 05/27/2003

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EXAMINER

SORKIN, DAVID L

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 05/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/864,809

Applicant(s)

BELLASALMA ET AL.

Examiner

David L. Sorkin

Art Unit

1723

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 May 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☒ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see Detailed Action.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-22 and 26-31.

Claim(s) withdrawn from consideration: _____.

8. ☒ The proposed drawing correction filed on 19 May 2003 is a) ☐ approved or b) ☒ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____.

DETAILED ACTION

1. The proposed amendments to the specification raise the issue of new matter. Numerous amendments are proposed which are in direct contradiction to the original text. Examples of such proposed changes are:
 - a. in paragraph [28], changing "least" to - - most - -.
 - b. in paragraph [28], changing "provides" to - - does not provided - -.
 - c. in paragraph [28], changing "is thus limited" to - - is thus no longer limited - -.
 - d. in paragraph [26], changing "opening 36B" to - - opening 36C - - and "opening 36C" to - - opening 36B - -.
 - e. in paragraph [30], changing "valve 32A" to - - valves 32 B and 32C - -.
 - f. in paragraph [31], changing "valve 32A" to - - valves 32 B and 32C - -.
 - g. in paragraph [32], changing "valve 32A" to - - valve 32B - - and "valve 32B" to - - valve 32C - -.
2. The proposed drawing changes raise the issue of new matter. The proposed drawings contradict paragraph [26] which states "opening 36B is sized to be larger than opening 36C".
3. The proposed drawings still do not address the absence of reference sign "46".
4. The proposed amendment to claim 21 would require further search and/or consideration because the limitations of claim 21 and 22 would no longer be in combination with the limitations of claim 20. Prior art which does not disclose the limitations of claim 20 would have to be considered with regard to the limitations of claims 21 and 22.

5. While the proposed amendment indicates that claim 29 is amended therein, such is not the case. While claim 29, is marked up as if it were amended, the markings are inaccurate.
6. The proposed amendment does not address the objection to claims 1-16, 26, 27 and 30.
7. Applicant discusses the term "mix head", but does not point out any structural difference between the claimed "mix head" and the prior art, except for the specific mix head of claims 27 and 29.
8. Applicant contends the Paulson (US 887,120) can not properly be relied upon because it is "nonanalogous" art. Paulson (US 887,120) was the basis for rejection of claims under section 102 only (not section 103). "Arguments that the alleged anticipatory prior art is 'nonanalogous art' or 'teaches away from the invention' or is not recognized as solving the problem solved by the claimed invention, [are] not 'germane' to a rejection under section 102." *Twin Disc, Inc. v. United States*, 231 USPQ 417, 424 (Cl. Ct 1986) (quoting *In re Self*, 213 USPQ 1, 7 (CCPA 1982)). Applicant quotes *In re Oetiker*, 24 USPQ2d 1443 (Fed. Cir. 1992); however, the quotation regards only section 103, not section 102.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 703-308-1121. The examiner can normally be reached on 8:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 703-308-0457. The fax phone

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numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



David Sorkin

May 22, 2003



CHARLES E. COOLEY
PRIMARY EXAMINER